

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY MARANO COMPANY

Plaintiff

V.

MS-GRAND BRIDGEVIEW, INC.,
an Illinois corporation, d/b/a
MELROSE FRESH MARKET,
PETER LIMPERIS, and MAKIS LIMPERIS

Defendants

Case No. 08CV4244
Judge Zagel
Magistrate Judge Brown

JACK TUCHTEN WHOLESALE PRODUCE, INC.

Intervening Plaintiff

V.

MS-GRAND BRIDGEVIEW, INC.,
an Illinois corporation, d/b/a
MELROSE FRESH MARKET,
PETER LIMPERIS, and MAKIS LIMPERIS

Defendants.

**AFFIDAVIT OF MARY ROJAS IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION ORDER**

Mary Rojas, being duly sworn, deposes and says:

1. I am the Credit Manager of Auster Acquisitions, LLC a/t/a The Auster Company, Inc. ("Auster"), and make this Affidavit in support of Intervening Plaintiff's Motion for Preliminary Injunction Order.

2. I am an adult who, if called upon as a witness, would and could competently testify to all facts stated in this affidavit. The facts set forth in this

affidavit are within my personal knowledge.

3. Auster is a business located in Chicago, Illinois which bought and sold wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate produce. Auster is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. 499a *et seq.* (hereafter "PACA").

4. My responsibilities as Credit Manager of Auster include supervising collection of the accounts receivable for Auster's sales of perishable agricultural commodities, including the account MS-Grand Bridgeview, Inc. d/b/a Melrose Fresh Market ("Melrose"). I have custody and control of the sales and accounts receivable records of Auster as they relate to Melrose, and am familiar with the manner in which those records were compiled.

5. Between June 16, 2008, and August 27, 2008, Auster entered into a series of transactions with Melrose, whereby Auster sold and delivered to Melrose, wholesale amounts of produce worth \$125,484.00. These commodities were grown, shipped and moved in or in anticipation of interstate commerce. An itemized statement of account is attached as Exhibit A.

6. With respect to each shipment, Auster sent an invoice to Melrose that contained the language required by 7 U.S.C. 499e(c)(4). A sample copy of one of the unpaid invoices sent to Melrose, which are voluminous, is attached hereto as Exhibit B. All of the Auster invoices contain the requisite statutory language of notice of intent to preserve PACA trust rights.

7. I have talked to Melrose's Accounts Payable Clerk, Mary, about the

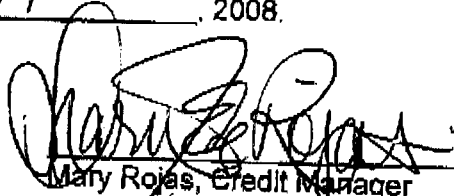
outstanding account of Melrose. Melrose has never disputed the amount due and owing to Auster but advised that Melrose is experiencing severe cash flow problems and cannot pay the balance due to Auster.

8. Defendants' failure, refusal and inability to pay, indicates that Defendants are failing to maintain sufficient assets in the statutory trust to pay Intervening Plaintiff and similarly situated creditors like Auster, and are dissipating trust assets.

10. The outstanding balance due and owing to Auster from Melrose is the principal amount of \$125,484.00, contract interest, and reasonable attorneys fees and costs incurred. Auster intends to intervene in this action as a party plaintiff to protect its interests and enforce its PACA trust rights against defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9-04-, 2008.



Mary Rojas, Credit Manager
Auster Acquisitions, LLC
a/va The Auster Company, Inc.

EXHIBIT "A"



Statement from:
Auster Acquisitions, LLC
2404 S Wolcott Ave
Chicago, IL 60608
(312) 829-6550 (312) 666-0095

013715
MS GRAND INC (BRIDGEVIEW)
MELROSE FRESH MARKET
10280 S HARLEM AVE
BRIDGEVIEW, IL 60455

Outstanding Invoices as of 09/04/08

Date	Invoice	Type	Reference	Charges	Credits	Amount Due	Balance
06/16/08	01040412	IV		1,703.00		1,703.00	1,703.00
06/17/08	01040737	IV		1,159.50		1,159.50	2,862.50
06/17/08	01040738	IV		1,570.00		1,570.00	4,432.50
06/23/08	00052734	CM	SO:01040738				
06/23/08	01042099	IV			-245.00	-245.00	4,187.50
06/23/08	01042107	IV		2,120.00		2,120.00	6,307.50
06/24/08	01042433	IV		2,335.00		2,335.00	8,642.50
06/24/08	01042434	IV		151.00		151.00	8,793.50
06/24/08	01042478	IV		1,245.00		1,245.00	10,038.50
06/26/08	01042972	IV		1,344.00		1,344.00	11,382.50
06/27/08	01043458	IV		1,295.00		1,295.00	12,677.50
06/28/08	01043605	IV		2,055.00		2,055.00	14,732.50
06/28/08	01043610	IV		490.00		490.00	15,222.50
06/29/08	01043737	IV		1,617.00		1,617.00	16,839.50
06/30/08	01043874	IV		1,116.00		1,116.00	17,955.50
06/30/08	01043878	IV		1,765.00		1,765.00	19,720.50
07/01/08	01044192	IV		1,449.00		1,449.00	21,169.50
07/01/08	01044193	IV		4,326.00		4,326.00	25,495.50
07/02/08	00052869	CM	SO:01044192	230.00		230.00	25,725.50
07/03/08	01044754	IV			-170.00	-170.00	25,555.50
07/03/08	01044758	IV		3,255.00		3,255.00	28,810.50
07/03/08	01044762	IV		1,787.00		1,787.00	30,597.50
07/05/08	01045130	IV		216.00		216.00	30,813.50
07/05/08	01045132	IV		2,359.00		2,359.00	33,172.50
07/05/08	01045137	IV		1,300.00		1,300.00	34,472.50
07/06/08	01045284	IV		1,605.50		1,605.50	36,078.00
07/07/08	01045438	IV		880.00		880.00	36,958.00
07/07/08	01045458	IV		2,430.00		2,430.00	39,388.00
07/08/08	01045802	IV		560.00		560.00	39,948.00
07/08/08	01045810	IV		4,356.00		4,356.00	44,304.00
07/10/08	01046380	IV		1,248.00		1,248.00	45,552.00
07/14/08	01047228	IV		2,475.00		2,475.00	48,027.00
				1,265.00		1,265.00	49,292.00

Current
CONT

15 - 21
CONT

22 - 28
CONT

Over 28 days
CONT

Total Due
CONT

FACA TRUST PROVISION: The perishable agricultural commodities listed on these invoices are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to Seller within eight hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum). In the event legal action becomes necessary to collect the sums due under these invoices, Buyer agrees to pay all costs of collection, including court costs and attorneys' fees.



Statement from:
Auster Acquisitions, LLC
2404 S Wolcott Ave
Chicago, IL 60608
(312) 829-6550 (312) 666-0095

013715
MS GRAND INC (BRIDGEVIEW)
MELROSE FRESH MARKET
10280 S HARLEM AVE
BRIDGEVIEW, IL 60455

Outstanding Invoices as of 09/04/08

Date	Invoice	Type	Reference	Charges	Credits	Amount Due	Balance
07/14/08	01047231	IV		420.00		420.00	49,712.00
07/15/08	01047573	IV		2,470.00		2,470.00	52,182.00
07/15/08	01047574	IV		864.00		864.00	53,046.00
07/15/08	01047597	IV		240.00		240.00	53,286.00
07/17/08	01048154	IV		1,487.50		1,487.50	54,773.50
07/17/08	01048162	IV		261.00		261.00	55,034.50
07/18/08	01048661	IV		575.00		575.00	55,609.50
07/18/08	01048663	IV		780.00		780.00	56,389.50
07/19/08	01048827	IV		520.00		520.00	56,909.50
07/19/08	01048829	IV		1,395.00		1,395.00	58,304.50
07/19/08	01048866	IV		105.00		105.00	58,409.50
07/21/08	01049038	IV		3,503.00		3,503.00	61,912.50
07/22/08	01049388	IV		2,360.00		2,360.00	64,272.50
07/22/08	01049391	IV		350.00		350.00	64,622.50
07/22/08	01049392	IV		500.00		500.00	65,122.50
07/23/08	01049727	IV		455.00		455.00	65,577.50
07/24/08	00053183	CM	SO:01049388		-560.00	-560.00	65,017.50
07/24/08	01049903	IV		4,072.00		4,072.00	69,089.50
07/25/08	01050284	IV		1,630.00		1,630.00	70,719.50
07/25/08	01050309	IV		290.00		290.00	71,009.50
07/25/08	01050334	IV		145.00		145.00	71,154.50
07/26/08	01050599	IV		2,765.00		2,765.00	73,919.50
07/28/08	01050818	IV		3,602.00		3,602.00	77,521.50
07/28/08	01050834	IV		837.00		837.00	78,358.50
07/28/08	01050866	IV		350.00		350.00	78,708.50
07/28/08	01050870	IV		220.00		220.00	78,928.50
07/29/08	01051130	IV		516.50		516.50	79,445.00
07/29/08	01051133	IV		3,730.00		3,730.00	83,175.00
07/29/08	01051136	IV		1,320.00		1,320.00	84,495.00
07/30/08	01051436	IV		308.00		308.00	84,803.00
07/30/08	01051439	IV		3,875.00		3,875.00	88,678.00
07/31/08	01051697	IV		1,346.00		1,346.00	90,024.00

Current
CONT

15 - 21
CONT

22 - 28
CONT

Over 28 days
CONT

Total Due
CONT

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Chicago, IL 60608
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013715
MS GRAND INC (BRIDGEVIEW)
MELROSE FRESH MARKET
10280 S HARLEM AVE
BRIDGEVIEW, IL 60455

Outstanding Invoices as of 09/04/08

Date	Invoice	Type	Reference	Charges	Credits	Amount Due	Balance
07/31/08	01051700	IV		667.00		667.00	90,691.00
08/01/08	01052113	IV		2,156.00		2,156.00	92,847.00
08/01/08	01052121	IV		361.50		361.50	93,208.50
08/02/08	01052287	IV		4,499.00		4,499.00	97,707.50
08/02/08	01052310	IV		2,385.00		2,385.00	100,092.50
08/04/08	00053319	CM	SO:01051700		-220.00	-220.00	99,872.50
08/04/08	01052570	IV		1,282.00		1,282.00	101,154.50
08/04/08	01052584	IV		1,213.00		1,213.00	102,367.50
08/18/08	01055630	IV		3,616.00		3,616.00	105,983.50
09/04/08	01055630	PY	1019		-3,342.50	273.50	102,641.00
08/19/08	01055897	IV		2,080.00		2,080.00	104,721.00
08/20/08	01056162	IV		4,402.50		4,402.50	109,123.50
08/20/08	01056169	IV		400.00		400.00	109,523.50
08/20/08	01056174	IV		320.00		320.00	109,843.50
08/21/08	00053551	CM	SO:01055604		-60.00	-60.00	109,783.50
08/21/08	01056405	IV		662.00		662.00	110,445.50
08/21/08	01056410	IV		408.50		408.50	110,854.00
08/22/08	01056802	IV		3,410.50		3,410.50	114,264.50
08/22/08	01056820	IV		614.50		614.50	114,879.00
08/23/08	01057045	IV		2,378.50		2,378.50	117,257.50
08/25/08	01057164	IV		1,833.00		1,833.00	119,090.50
08/25/08	01057179	IV		992.50		992.50	120,083.00
08/26/08	01057468	IV		3,272.00		3,272.00	123,355.00
08/26/08	01057473	IV		1,373.50		1,373.50	124,728.50
08/27/08	00053618	CM	SO:01057179		-247.00	-247.00	124,481.50
08/27/08	00053618	CM	SO:01057473		-140.00	-387.00	124,341.50
08/27/08	01057693	IV		600.50		600.50	124,942.00
08/27/08	01057727	IV		542.00		542.00	125,484.00

<u>Current</u>	<u>15 - 21</u>	<u>22 - 28</u>	<u>Over 28 days</u>	<u>Total Due</u>
15,640.50	7,476.00	.00	102,367.50	\$125,484.00

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EXHIBIT "B"

THE AUSTER COMPANY, INC.
Wholesale Fruits and Vegetables
2404 S. Wolcott Avenue, Units 32-33 - Chicago, IL 60608
Phone: (312) 829-6550 • Fax: (312) 666-0095



THE AUSTER COMPANY, INC.

Invoice: 01040412

Customer: 013715

Ship to:

P.O.:

06/16/08

MS GRAND INC (BRIDGEVIEW)

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

Invoice: 09/04/08 10:15a

Customer: 01040412

Ship to:

013715

P.O.:

06/16/08

MS GRAND INC (BRIDGEVIEW)

5 APPLES, EMPIRES 113CT

@ 21.00= 105.00

5 APPLES, EMPIRES 113CT

00064257

21 APPLES, ROYAL GALA 113CT

@ 38.00= 798.00

21 APPLES, ROYAL GALA 113CT

00064092

10 PEARS, ANJOU

@ 32.00= 320.00

10 PEARS, ANJOU

00064178

5 PEARS, ANJOU

@ 16.00= 80.00

5 PEARS, ANJOU

00063747

50 PLUMS, RED BEAUTY

@ 8.00= 400.00

50 PLUMS, RED BEAUTY

00064198

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to Seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum). In the event legal action becomes necessary to collect the sums due under this invoice, Buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL
1703.00

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

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WRITTEN BY
Salesman: Nick Flore
Nick Flore

DELIVERED BY